MUNANDU SANGARAN

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
GUNN CHIT TUAN J
[CRIMINAL REVISION NO. 1 OF 1984]
6 MARCH 1984

CRIMINAL LAW AND PROCEDURE: *Revision - Plea of guilty - Accused unrepresented - Whether accused fully understood nature of charge or appreciated essential ingredients of the offence before pleading guilty - Qualified plea of guilty.*

The accused pleaded guilty to a charge of theft of a bicycle. At the trial the accused who was unrepresented was told the charge was for a minor case and his job would not be affected if he pleaded guilty. He pleaded guilty thereto. In mitigation he stated "Saya sedang mabuk pada waktu kejadian. Saya tersilap ambil basikal." In spite of what the accused said the learned Magistrate fined the accused RM300 in default 3 months' imprisonment. As a result of the conviction the accused lost his job and pension rights.

Upon revision:

Held:
[1] Where accused is unrepresented every ingredient and question of the charge should be explained to the accused by the Magistrate and his replies recorded, and that no plea of guilty should be recorded if there is doubt that the plea is a qualified plea of guilty.

[2] In this case the accused's plea did not constitute an unequivocal plea of guilty and his plea should not have been accepted.

[Finding and sentence reversed. Retrial before another Magistrate]

Cases referred to:
Heng Kim Khoon v. PP [1972] 1 MLJ 30
Yeo Sim Huat v. PP [1961] 27 MLJ 328
Lau Eng Teck v. PP [1965] 1 MLJ 34
Rex v. Lim Soon Gong & Ors. [1939] MLJ 10

Legislation referred to:
Courts of Judicature Act 1964, s. 31

For the applicant - T.S. Dhillon; M/s. Dhillon & Co.
For the public prosecutor - Phang Ah Hee; DPP

JUDGMENT

Gunn Chit Tuan J:

I called for the record of proceeding in this case which was brought to my attention by Mr. T.S. Dhillon, an advocate and solicitor who was instructed by the accused to ask the High Court to exercise its powers of revision in respect of criminal proceedings and matters in subordinate Courts under s. 31 of the Courts of Judicature Act, 1964 (Revised - 1972).

The accused was charged in the Magistrate's Court, Kuala Lumpur, for theft of a bicycle valued at about RM50 between 12.30 p.m. and 1.30 p.m. at Jalan Pudu. The accused, who was unrepresented, pleaded guilty on 25 October 1983 and the learned Magistrate accepted his plea accordingly. But before sentence was passed it was recorded that the accused had said in mitigation as follows:-

> Saya sedang mabuk pada waktu kejadian. Saya tersilap ambil basikal.

According to the instructions given to Mr. Dhillon, the accused, who is a gardener employed by Maktab Perguruan Ilmu Khas, had gone to Jalan Pudu on his own "ladies bicycle" to have a drink during the lunch break. He parked his bicycle alongside other bicycles and after his drink he took a "ladies bicycle" which he thought was his and left. He was later arrested by the police and taken to the police station. According to Mr. Dhillon the accused had pleaded guilty because he was told that it was a minor case and that his job would not be affected under the prevailing circumstances and that he would receive a reprimand with no custodial sentence or fine. However, the learned Magistrate fined him RM300 in default three months' imprisonment and as a result of the conviction, the accused, who has been employed as a Government servant for the last 23 years, lost his job and pension rights.

It was the contention of Mr. Dhillon that the learned Magistrate had not considered carefully whether the accused fully understood the nature of the charge to which he had pleaded guilty or alternatively whether the accused knew and appreciated the essential ingredients of the offence of theft. He referred to *Heng Kim Khoon v. Public Prosecutor* [1972] 1 MLJ 30, 31, in which case Sharma J (as he then was) had said that:-

> .... A plea of guilty may be accepted by the Court and the accused convicted on it, but the Court is not bound to accept a plea of guilty in all cases. The Court must carefully consider whether the accused has fully understood the nature of the charge to which he pleads guilty. The accused is not to be taken at his word when he pleads guilty unless the plea is expressed in unmistakeable terms with full appreciation of the essential ingredients of the offence. This rule of law is applied with all the greater stringency when the offence charged is complicated or serious.

I agreed with the contention of Counsel that where an accused is unrepresented every ingredient and question of the charge should be explained to the accused by the Magistrate and his replies recorded, and that no plea of guilty should be recorded if there is doubt that the plea is a qualified plea of guilty. (See *Yeo Sim Huat v. Public Prosecutor* [1961] 27 MLJ 328). In this case it was clear that the accused's plea did not constitute an unequivocal plea of guilty and his plea should not have been accepted *(Lau Eng Teck v. Public Prosecutor* [1965] 1 MLJ 34). I was satisfied after examining the record of proceeding in this case that the accused did not fully understand the charge or knew that if he really in good faith and believing the bicycle to be his own property had taken it out of the owner's possession, then he did not take it dishonestly, and therefore did not commit theft. *(Rex v. Lim Soon Gong & Ors.* [1939] MLJ 10, 12). In the circumstances of this case, I therefore reversed the finding and sentence and ordered the case to be remitted for retrial before another Magistrate.

Also found at [1984] 2 CLJ 50